DISCIPLINARY POWERS OF UNIONS

CLYDE SUMMERS *

THE VAST increase of economic power in the hands of unions has focused attention on the necessity for assurance that the unions will fairly represent the workers for whom they bargain. It is significant that among the major changes made in the Wagner Act by the Labor Management Relations Act of 1947 was the addition of sections purported to be aimed at protecting individual union members against undemocratic and corrupt leaders.[1] Provision was also made for a special committee to study, among other things, "the internal organization and administration of labor unions. . . ." [2]

One important part of the problem of internal democracy centers in the power of unions to discipline their members by expulsion, fines, or other penalties. Discipline is essential for the maintenance of the union as an effective and orderly organization, but it is also the potential instrument of oppression when misused by overzealous or corrupted leaders. Although a multitude of modern muckrakers have dramatized a few horrible examples of expulsion, almost no effort has been made to determine the extent to which unions have used or abused their disciplinary powers.

The purpose of the present study is to describe the disciplinary practices of unions in order that the extent and nature of this aspect of the problem of internal democracy may be better understood. It is not the purpose of this paper to condone or condemn any particular union practices, nor to discuss any of the legal limitations on union discipline. The purpose is simply to describe what unions do and why they do it.

The constitution of the international union is the principal formal control of discipline. To the extent that it spells out offenses which are punishable and the procedure which may be followed, it is binding on

* Associate Professor of Law, University of Buffalo, Buffalo, N. Y.

[1] Title I, sec. 9(e) (requirement of majority vote for union shop); sec. 9(f) and (g) (requirement of filing financial reports and non-Communist affidavits as a prerequisite for certification); and Title II, sec. 209(b) (requirement of vote on employer's last offer in national emergency strikes).

[2] Title IV, sec. 402(3).

both the parent and the local union. If the local fails to follow the constitution, the member being tried may appeal to the international. If the international fails to enforce its constitution, he may appeal to the courts. It is fair to say that the international constitution is the basic law of union discipline; therefore, this study has included an examination of the constitutions of 154 international unions, including those of all unions of substantial size and importance.

Paper provisions, however, do not give a complete picture of union practices. The constitution may have no substantial provisions concerning discipline, thus leaving the locals free to punish as they please; the provisions may be so vague and general that they are susceptible to expansive interpretation, and thus constitute no practical restraint; or the provisions for appeal may involve such a burden that there is no effective check on violations of the constitution. In order to obtain a picture of these practices, a study has been made of 218 discipline cases described in various court, board, and arbitration decisions (190 court decisions, 12 National Labor Relations Board decisions, 5 National War Labor Board decisions, and 11 private arbitration awards). With a realization that many cases never become involved in any such legal procedures, an attempt has been made to complete the picture by determining the total number of discipline cases within some of the large unions.[3]

Before proceeding into a description of the particular offenses for which unions punish their members or the special procedures which they use in imposing discipline, it is necessary to sketch the background against which those details are cast. The first element of background is a rough outline of the over-all extent to which unions exercise their discipline powers. This will help give perspective to the size of the problem within the union movement. The second element of background is a delineation of the underlying reasons why unions discipline their members. An understanding of these roots of union discipline will shed light on particular applications of union discipline which might otherwise appear arbitrary.

THE EXTENT OF UNION DISCIPLINE

It is impossible to get accurate information concerning the precise extent to which unions fine, suspend, or expel their members. Discipline is primarily a local matter, so that the international officers know rela-

[3] As a part of the survey, inquiries were sent to the officers of all international unions with a membership of more than 50,000 and to a few of the more important smaller unions. Replies of varying degrees of helpfulness were received from forty-three unions.

tively little of local practices except in those cases in which appeals are taken. Furthermore, it is not the type of information which union officers are particularly anxious to divulge. However, there is enough information available to give a rough estimate of the size of the problem.[4]

That unions do discipline their members is evidenced by the 218 adjudicated cases involving discipline which have been reported.[5] Of these cases, 88 involved multiple or mass discipline; thus the number of members involved is far greater than the number of cases.[6] Although a few unions seem to be frequent participants in these cases, at least 86 different unions were involved. This indicates that the problem of discipline is not limited to a few unions but reaches into a great part of the union movement.[7]

It is obvious that the reported cases do not give an accurate or complete picture. Some indication of the extent of discipline may be gained from other limited information available. In 10 years from 1936 to 1946 the Typographical Union expelled 449 members; [8] from 1940 to 1946 the skilled division of the Flint Glass Workers expelled 67; [9] and in 1946

[4] Of the forty-three replies which were received from the officers of international unions, a large number were noncommittal, and many of those who gave specific information requested that the identity of the union be kept confidential. In at least two cases the information given is known to be inaccurate.

[5] These cases include all those reported since 1890. The periods in which these cases arose are as follows: before 1930—72; 1930 to 1935—24; 1936 to 1940—27; 1941 to 1945—53; since 1945—42. The apparent increase in the number of cases is at least partly due to the great increase in the number of union members since 1933 and partly to the more complete reporting of cases in the lower courts in recent years.

[6] In one case the Rubber Workers fined 572 members $12.50 per person for engaging in a wildcat strike (see United States Rubber Co. and United Rubber Workers, 21 War Labor Reports 182 [1945]). In other cases whole local unions were expelled by revocation of the local charter; for examples, see Kunze v. Weber, 197 App. Div. 319, 188 N.Y.S. 644 (1921) (Musicians); and Heasley v. Operative Plasterers, 324 Pa. 257, 188 A. 206 (1936).

[7] The following list shows the unions involved in three or more cases, with the number of cases: Stagehands, 15; Teamsters, 13; Locomotive Engineers, 12; Carpenters, 10; Musicians, 10; Operating Engineers, 9; Painters, 7; Railroad Trainmen, 7; Bricklayers, 6; Brewery Workers, 4; Plumbers, 4; Bridge, Structural & Ornamental Iron Workers, 4; Plasterers, 4; Street and Electric Railway Employees, 3; Hodcarriers, 3; Building Service Employees, 3; Typographical Union, 3; Electricians (AFL), 3.

[8] *Annual Report of the Treasurer for Fiscal Year Ending May 21, 1947*, p. 64. The expulsions in the various years are as follows: 1919—133; 1920—193; 1921—1,980; 1922—354; 1923—156; 1924—106; 1925—45; 1926—40; 1927—48; 1928—66; 1929—51; 1930—41; 1931—50; 1932—55; 1933—79; 1934—45; 1935—209; 1936—28; 1937—60; 1938—45; 1939—26; 1940—38; 1941—42; 1942—32; 1943—19; 1944—22; 1945—85; 1946—80. The large number of expulsions in 1921 was a by-product of the bitter strike for the 44-hour week. The 1935 figure reflects the efforts to enforce the 44-hour week in some small Canadian unions. The increase in the last two years resulted from the expulsion of Mailers, who seceded and formed a dual union. [Explanation by the Secretary-Treasurer.]

[9] Steele, "The Flint Glass Workers" (Unpublished doctoral dissertation, Ohio State University, 1947, p. 446).

and 1947 the Rubber Workers expelled 19.[10] The Teamsters Convention of 1947 reviewed 6 expulsions;[11] and the National Maritime Union Convention of 1945 reviewed 12 expulsions.[12] Over a four-year period the international executive board of the United Mine Workers reviewed 935 appeals;[13] and over a five-year period the Hodcarriers reviewed 69 appeals.[14]

Statistics concerning the extent of union discipline may be deceiving if the total number of suspensions is indiscriminately included. Although members may occasionally be suspended as punishment for an offense or nonpayment of a fine, almost all suspensions are cases of delinquencies in dues.[15] The number of expulsions may also be deceiving, for in many cases members who are expelled are reinstated a short time later, thus making their penalty only a temporary suspension.[16]

From the rather limited information available, certain broad outlines become fairly clear. First, the number of discipline cases is exceedingly small in proportion to the number of members, and the use of the disciplinary power is a rare occurrence in the overwhelming majority of local unions. The Flint Glass Workers expel an average of one out of every 1,000 members each year, the Typographical Union one out of every 2,000, and the appeals in the United Mine Workers average one for every 2,500 members. In the minds of most union officers, the exercise of the discipline power is a matter of incidental importance compared with the work of administering the union, organizing new

[10] *Report of the Officers to the 12th Annual Convention of the United Rubber, Cork, Linoleum, and Plastic Workers of America,* 1946, p. 40; *ibid., 11th Annual Convention,* 1947, p. 53.

[11] *Proceedings, 15th Convention, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers,* 1947, *passim.*

[12] *Proceedings, Fifth National Convention, National Maritime Union,* 1945, *passim.*

[13] *I United Mine Workers Proceedings* (1942), p. 333; *ibid.* (1944), p. 335. It is claimed that in one year the United Mine Workers disciplined 4,031 members with fines totaling $287,205 and suspensions totaling 150,177 years; Chamberlain, "The Judicial Process in Labor Unions," 10 *Brook. L. Rev.* (1940), p. 145 at 147–8.

[14] *Proceedings, Ninth Convention, International Hodcarriers, Building, and Common Laborers Union of America,* 1946, *passim.* Only nine of these appeals involved expulsion.

[15] One of the railroad brotherhoods reports that suspension for nonpayment of dues averages about 2,000 a month, and another brotherhood reports an average of about 300 a month. In the Typographical Union suspensions vary from 50 to 100 a month.

[16] The Stereotypers report that about three-fourths of those who are expelled are later reinstated. The Railway and Steamship Clerks report that they have practically no expulsions except for embezzlement, and even in these cases the member is frequently reinstated after six months. Similarly the Hotel and Restaurant Employees report that all expelled members are eligible for readmission and that a large portion are reinstated. One small union of about 10,000 members reports that for the year ending May 31, 1947, 63 members were suspended and 71 reinstated.

locals, and bargaining with the employers.[17] In the words of President Burke of the Pulp Workers: "Our union is not interested in expelling members. We are spending thousands of dollars every year in organizing new members." Second, the number of cases in which the discipline power is abused is probably very small. Although courts have uniformly provided substantial forms of relief against abusive discipline, there have been only 218 reported cases over a period of 60 years — less than four a year. Although many individuals would hesitate to resort to the courts, and many cases would not be appealed to a court in which they would be reported, the comparatively small number of reported cases is some indication that in the large majority of instances the discipline has been imposed for proper reasons and by a fair procedure.

Furthermore, it should be recognized that the discipline power has its own practical limitations. Since the union's effectiveness is based largely on the degree to which it controls the available labor, expulsions tend to weaken the union. If large numbers are expelled, they become a threat to union standards by undercutting union rates, and in case of a strike they may act as strikebreakers.[18] Even more likely, they will be driven into the arms of a rival union.[19] If disciplinary practices are too severe, they may lead to a widespread revolt within the union or secession to a rival union. Therefore, expulsions must be limited to very small

[17] Out of the 43 replies from international unions, a great majority reported that expulsions in their union were "very rare," "few and far between," or "almost negligible." Ten of the more specific replies are indicated below. Because the answers were in many cases confidential, the union is indicated only by its approximate size: 10,000 — "average of four expulsions a year"; 40,000 — "in a normal year, ten expulsions would be high"; 70,000 — "25 members expelled (a year) . . . for theft, intoxication, or dual unionism"; 70,000 — "1945, three expulsions; 1946, two; 1947, 20 . . . in every case due to returning to work in shops still on strike"; 150,000 — "an average of five or ten a year"; 250,000 — "average of less than ten annually"; 250,000 — "eleven appeals in 1947"; 250,000 — "ten expulsions in the last ten years"; 500,000 — "three appeals a month to the general office"; 500,000 — "from 1937 to 1947 . . . 1,317 expulsions."

[18] Cf. Grossman, *William Sylvis, Pioneer of Labor* (1942), pp. 105–110. The Moulders early adopted a very hostile attitude toward those who failed to pay their dues, and President Sylvis denounced scabs as "vultures around the carcass gnawing out its vitals." Scabs were not only expelled, but their names were advertised in the union journal, and they were blacklisted in a "scab album." However, this policy finally led to some cities, such as New York and Baltimore, having as many workers on the blacklist as in the union, and Sylvis discovered that these men constituted a dangerous source of competition outside the union. He finally surrendered to the economic pressure and urged amnesty for these men so they could be re-enrolled in the union.

[19] When the Rubber Workers fined several hundred members in a Detroit plant for engaging in a wildcat strike, a large number of them joined the Mechanics Educational Society and attempted to supplant the Rubber Workers as the bargaining agency (*Business Week,* March 3, 1945, p. 108).

numbers unless the union is so strongly entrenched that it cannot be effectively challenged by the employer or another union.

The political influence within the union may also limit the use of the discipline power. An officer in a union which has active and relatively equal factions will hesitate to use the discipline power lest he create campaign arguments for his opposition and alienate votes. It is this factor which has been largely responsible for the sparing use of union discipline against groups which engage in "wildcat strikes." The accusation that the officers were "stooges for management" might have repercussions that even the most idealistic union leader would seek to avoid.

The problem of union discipline is, then, a small one when viewed in proportion to the size of the union movement. It is important, not because it involves large numbers, but because it involves the individual rights of a member within his union. It is a problem of civil liberties, and our concern should be aroused by even a single violation. The substantial number of discipline cases, therefore, compels us to inquire closely to determine to what degree and in what ways the unions are using their discipline power to restrict the personal rights of their members.

THE ROOTS OF UNION DISCIPLINE

If disciplinary practices are to be seen in their proper perspective, there must be a clear understanding of some of the underlying reasons which motivate unions in disciplining their members. The roots of union discipline sink deep into the economic and political soil from which the union itself springs. Disciplinary practices are but a product of the purposes of unions and their position in our economy.

The union's primary function is to obtain economic benefits for its members. Its strength, in fact, its very existence, depends on its being an effective economic instrument for the workers. Any act which interferes with its effectiveness is a threat to its existence.

While the effectiveness of a union in collective bargaining is based to a large extent on the ability of the union to prosecute a strike, it is also dependent on the ability of the union to supply the industrial peace and co-operation which the employer seeks. If the union fails to curb wildcat strikes, future bargaining relations are seriously impaired. If belligerent members constantly foment discord, management will retaliate by "getting tough." If favor-seeking employees decide to undercut the agreement, many of the hard-earned benefits are wiped out.

In peaceful collective bargaining these needs for discipline are rela-

tively small, but many negotiations are carried on with the prospect of an immediate or possible break of diplomatic relations and a resort to force. If the break comes, the union goes to war and the need for discipline is obvious.[20] The employer is the enemy; giving him any aid or comfort is treason. To supply him with labor is to furnish him the weapon with which the battle is fought and is clear treason. Making statements in any way favorable to the employer is gross disloyalty. Criticizing the union is sedition. A union on strike manifests the fierce loyalties, false or true patriotism, suspicious fear, and rigid regimentation of a nation engaged in total war.[21]

Although no strike may be in progress, industrial relations have too often consisted of little more than an armed truce, during which both parties prepare for the coming struggle. One of the chief instruments which the employers have used in the past was the labor spy. He was hired to infiltrate into the union, where, through militant action and hard work, he would obtain a position of importance within the union. Using his position, he then obtained membership lists and information as to secret plans, which he supplied to the employer. If this was not sufficient to destroy the union, he made false charges against the officers to discredit them, criticized the union's policies as too "soft," spread rumors that other members were spies, encouraged acts of violence which

[20] The language of the strike is itself reflective of the battle spirit, with its "ultimatums," "tactical maneuvers," "defense funds," "strike lieutenants," "flying squadrons," "digging in," "surrender," and "victory" (see Williamson and Harris, *Recent Trends in Collective Bargaining* [1945], p. 197).

[21] Vague clauses in union constitutions have their counterpart in wartime sedition laws. The Sedition Act of 1918, 40 Stat. 553 (1918), made the following a crime: "(5) uttering, printing, writing, or publishing any disloyal, profane, scurrilous, or abusive language, or language intended to cause contempt, scorn, contumely, or disrepute as regards the form of government of the United States; (6) or the Constitution; (7) or the flag; (8) or the uniform of the Army or Navy; (9) or any language intended to incite resistance to the United States or promote the cause of its enemies."

Union prosecutions have their counterpart in the wartime prosecutions. For example, during World War I, Rose Pastor Stokes was convicted of sedition for arguing against the war by saying to other women, "I am for the people, and the government is for the profiteers" (see United States v. Stokes, 264 F. 18 [C.C.A., 8th, 1920] reversing the conviction in the lower courts). For other examples, see Chaffe, *Free Speech in the United States* (1941), pt. I.

A striking analogy to union expulsion is the denaturalization of citizens for alleged fraud in claiming allegiance at the time of taking the oath of citizenship. In United States v. Fischer, 48 F. Supp. 7 (S.D., Fla., 1942) an immigrant from Germany was denaturalized by the federal court on the evidence that fellow workers complained of his pro-Axis leanings, that he prayed for peace but not for victory, and that he had once refused to buy war bonds. He claimed he was misunderstood, as he praised Germany only as it was in 1937, and that he had hesitated to buy bonds because he did not want to help bomb his mother who still lived in Germany, but that he had later bought some when this country declared war against Germany. He was "expelled" from citizenship.

would discredit the union, and created dissension in every way possible. As a final blow he might either dissipate the union treasury or abscond with it entirely.[22]

Disruption of the union may result not only from activities of spies planted by the employer, but also from fights between factional groups within the union. Healthful democratic action within the union may be replaced by a destructive form of factionalism, particularly when Communists attempt to control the policies of the union. All who disagree with the policies of the Communists are vilified. Officers are accused of "lining their own pockets" and "betraying the rank and file." Wildcat strikes are called, and every effort is made to discredit those in power. As the whole arsenal of distortion, slander, and even violence is used, the members become aroused, confused, and then disgusted with both sides. The union is finally left too weak to do any more than surrender to the employer.[23] Even though the struggle for control or the clash

[22] The La Follette Committee found that between 1932 and 1936 industry was spending $80,000,000 a year for labor spy services supplied by a large number of agencies. These agencies boasted that there was at least one spy in every local union in the country. For a detailed statement of how spies operated to destroy unions from within, see Huberman, *The Labor Spy Racket* (1937); Calkins, *Spy Overhead: The Story of Industrial Espionage* (1937).

[23] During the 1920's the Communist policy was to "bore from within" and seize control of the labor movement. Communists succeeded in gaining control of several New York locals of the International Ladies' Garment Workers' Union and led the general strike of 1926. They were charged with mismanaging the strike, mishandling the funds, and dividing the union. The internal disruption became so great that the union was finally forced to settle for less than had been offered originally by the employers. This disastrous defeat nearly wrecked the union and so weakened it that it did not recover for over five years (Seidman, *The Needle Trades* [1941], pp. 116 ff.). During this same period a large number of unions were weakened by factionalism arising out of Communist activities within the union (Schneider, *The Workers (Communist) Party in American Trade Unions* [1927]; Perlman and Taft, *History of Labor in the United States* [1935], ch. 40; Lorwin, *The American Federation of Labor* [1933] pp. 259–263).

The problem of factionalism did not arise with the advent of the Communists in the labor movement. From the earliest day, unions were disturbed by the efforts of socialists to gain control by the same boring-from-within tactics. For an excellent study of the early problems, see Saposs, *Left Wing Unionism* (1926). The problem still exists in an acute form and can cause a complete destruction of the union. Thus Communist leadership succeeded in completely destroying the Cannery & Agricultural Workers Industrial Union in 1933 (Jamieson, *Labor Unionism in American Agriculture* [1945], p. 114). Similarly the Southern Tenant Farmers Union was split by Communist factionalism, and though Claude Williams, one of the left-wing leaders, was expelled, the union never recovered and became wholly ineffective (*ibid.*, p. 321).

For a vivid account of the Communist activities and techniques in unions generally, and in the Retail, Wholesale, and Department Store Employees in particular during World War II, see Levenstein, *Labor Today and Tomorrow* (1945), pp. 159–175. This author makes clear that the problem of factionalism is not limited to Communist activities but may arise as a product of any other caucus group, such as the anti-Communist Association of Catholic Trade Unionists (*ibid.*, pp. 163–164).

over issues involves no unscrupulous practices, the contest may create such bitterness that much of the energy of the union is dissipated and it becomes too divided to combat effectively the employer's attack from without.[24]

As long as a union operates under a constant fear and anticipation of having to battle the employer for economic gains, it is bound to look upon any activity within the union which creates dissension or division, not merely as an exercise of democratic rights, but as a threat to its safety. The Typographical Union has been able to develop and maintain a two-party system with conventions, nominations, platforms, and free campaigning on the issues and the candidates.[25] It may be more than coincidence that this union was fully accepted by the employer and did not have to strike to obtain its objectives for 25 years.

A union must defend itself, not only from attacks by the employer, but also from attacks by other unions. The overlapping of jurisdiction as well as the existence of two rival federations makes this a serious problem for almost every union. Union leaders see a dual union as a threat to their power, and the union member develops a strong sense of loyalty. A dual union is, therefore, looked upon as an enemy, second only to the employer.[26]

Unions seek to obtain economic benefits for their members primarily through collective bargaining. However, in an integrated economic system which is permeated with a substantial amount of governmental control, political action may be effective as a substitute or necessary as

[24] The United Auto Workers have been handicapped for a number of years by a sharp division into factions led by Reuther and Addes, respectively. During 1946 and 1947 the union was practically paralyzed by a deadlock between the factions, and every major decision was colored by the continuing feud. Charges and countercharges of misfeasance were made by the officers against each other and were publicized among the membership, and for months preceding the 1947 convention members of both factions neglected their work of administering the union and fought for control. Since the clear-cut Reuther victory, factional activities have subsided to a considerable degree.

Similar factional disturbances have weakened and at times threatened to destroy other unions, such as the National Maritime Union, the Seamen's Union, and the International Longshoremen's Association. The fight within the latter eventually led to a split and the formation of a dual union, the International Longshoremen's and Warehousemen's Union (see Taft *"The New Unionism,"* 29 *Amer. Econ. Rev.* [1939], 313, 320 ff.).

[25] Taft, "Opposition to Union Officers in Elections" (58 *Q. J. Econ.* [1944], 246, 255 ff.), gives an excellent history of the development of political parties within the Typographical Union and their campaign activities.

[26] In 1943 the Typographical Union gave the Executive Council power of summary expulsion in order to combat the threat of dual unionism among the Mailers; *Proceedings, 87th Convention* (1944), p. 72. See Shister, "Trade Union Government: A Formal Analysis," 60 *Q. J. Econ.* (1945), 78 at 93, 95.

a supplement to collective bargaining. Minimum wage laws reach those whom the union has been unable to bring to terms. Price control is urged to protect wage increases won at the bargaining table or on the picket line. Therefore, opposing legislation which the union believes necessary to protect or promote the economic welfare of its members is, from the union's viewpoint, another form of aiding the employer. Voting for a candidate who supports restrictive labor legislation is merely indirect "scabbing."

Discipline provisions or practices are merely a reflection of the union's larger struggle to survive and become an effective instrument for the economic betterment of its members.

With this background to give perspective to the size of the problem and an understanding of the roots from which discipline springs, it is now possible to make a more detailed examination of the union constitutions and union practices.

Every discipline case involves three separate elements: the offense with which the member is charged; the procedure by which he is tried; and the penalty which is imposed if he is found guilty. Each of these three elements will be discussed separately. From this detailed analysis it will be possible to discern certain general characteristics of union discipline and the particular points of weakness and danger.

PUNISHABLE OFFENSES

Although there is some similarity in union constitutions as to what shall amount to punishable conduct, there is scarcely a single specific offense which is mentioned in a majority of the constitutions. On the other hand, at least two hundred separate offenses are specified by the various unions. This widespread variation is a product of several factors. First, differences in types of work require different provisions for discipline. Thus, the Airline Dispatchers expel for intoxication while on duty; the Marine Cooks expel for theft from a union member; and the Locomotive Engineers expel for obtaining transportation by false representation. Second, many unusual provisions are a product of the particular union's history. The provision of the Locomotive Firemen and Enginemen that a member may be expelled for "immoral practices, wife abandonment, or improper treatment of family" is a product of the fraternal society origins of that union. Similarly, the provision of the Progressive Miners that "any member . . . taking a star and gun

for the purpose of using them against the interests of organized labor shall forfeit his membership" is rooted in the miners' bitter experiences with "coal guards." Third, differences in trade union philosophy are reflected in the disciplinary provisions. Thus the label-conscious Boot and Shoe Workers require members to buy union label goods, while the musicians' and printing trade unions prohibit members from working with nonmembers. The Chemical Workers may expel any person who "holds membership in a communist, fascist, or bundist organization," but the Marine Cooks may expel any person who discriminates against other members because of race, color, creed, or political opinions.

Constitutional provisions stating punishable offenses vary not only in the particular offenses which are prohibited, but also in the detail with which they are specified. At one extreme, the Marine Cooks list thirty specific offenses with the precise penalty for each of the first three violations.[27] Twenty-eight other unions codify offenses within a single section or article of the constitution, but in almost every case these are primarily a list of vague or general provisions, so that the codification is more apparent than real.[28] At the other extreme, sixteen unions state no punishable offenses, although some, such as the Paper Workers, provide a trial procedure.[29]

The great majority of unions are scattered widely between these two extremes. Some, like the Office and Professional Workers, provide for only one or two offenses, while others, like the Printing Pressmen, provide for a dozen or more offenses. However, two general characteristics are to be noted. First, so far as discipline provisions are concerned, the constitutions consist largely of a patchwork with specific offenses hidden in scattered sections. Second, the number of prohibitions stated

[27] For example, two of the listed offenses and the prescribed penalties are: "Shipping off Dock — 1st offense, — expulsion"; "Stool pigeon to Captain — 1st offense, — $10 and removal from ship, 2nd offense, — 6 months suspension, third offense, — expulsion." Constitution, 1947, art. V, sec. 12.

[28] Among the seventeen listed offenses of the Bakery and Confectionery Workers are the following: (1) violation of any specific provisions of the Constitution; (2) violation of the member's and/or officer's oath; (3) gross disloyalty; (4) conduct unbecoming a member or officer; (7) any dishonorable act which injures the labor movement in general or the International Union in particular; (11) persecuting or injuring another member in his or her work; (15) violation of any lawful regulations, rules, mandates and decrees of officers or bodies; (17) other acts and conduct which are inconsistent with the duties, obligations, and fealty of a member of a trade union and which violate sound trade union principles. Constitution, 1946, art. 23, sec. 7.

[29] Almost all these unions are unions of public employees which do not engage in collective bargaining but are little more than pressure groups organized for lobbying. The others are very young unions which have not yet evolved a detailed constitution.

is usually relatively small, but they are frequently expressed in broad and vague terms such as the provision in the United Electrical Workers Constitution punishing "offenses against . . . the general good and welfare of the Union."

It would be pointless and tedious to catalogue all of the offenses listed by unions. However, it is important to recognize the various major types or classes of offenses and to see how they have been applied by the unions in maintaining discipline in particular situations. Most of the illustrative cases used to show the application of particular clauses are taken from court decisions. Therefore, many of them represent the extreme and not the typical application; they do not show practice so much as potential dangers.

FINANCIAL DISCIPLINE

Almost every union constitution provides that any member who is two or three months in arrears in dues, fines, or assessments shall be automatically suspended from membership. To obtain reinstatement, he must pay the arrearage and frequently must pay a nominal reinstatement fee. Although these provisions might be construed as applying to failure on the part of a member to repay money borrowed from the union, three unions specifically provide for this offense. A more serious problem of financial discipline is suggested by the fact that 64 unions expressly provide punishment for misappropriation or mishandling of union funds.[30]

These provisions are of critical importance in giving financial protection to the unions, and their application is usually clearly defined.[31] However, a serious question may arise when a union seeks to use its power to levy dues and assessments in order to achieve political objectives. A widely publicized example of this occurred when the American Federation of Radio Artists levied a $1 assessment to oppose antilabor legislation. Cecil B. DeMille refused to pay on the ground that he should not be compelled to contribute to political action with which he was

[30] The early common law rule was that a union officer could not be criminally convicted for embezzling union funds. As a member he was a joint owner and was therefore taking only that which was jointly his. This view has now been repudiated; see State v. Postal, 215 Minn. 427, 10 N.W.(2d) 273 (1943); People v. Herbert, 162 Misc. 817, 295 N.Y.S. 251 (1937).

[31] In Lundine v. McKinney, 183 S.W.(2d) 265 (Tex. Civ. App., 1944) officers of Local 435 of the Plasterers refused to accept dues from members who criticized their policies. These members were then declared to be in bad standing, and employers were requested to discharge them. The court enjoined the officers from interfering with their membership or their employment.

not in sympathy. Because of his failure to pay he was suspended from the union.[32]

JOB DISCIPLINE

Two-thirds of the unions have provisions exercising some degree of discipline over a member's conduct on the job: 59 prohibit working on a job while a strike is in progress; 31 punish work stoppages in violation of agreement; 15 bar the making of individual contracts with the employer; and 11 prohibit members from working with nonmembers. Although these are the most prevalent regulations, different unions enforce a wide variety of work rules. The Bricklayers prohibit members from doing work outside their particular skill; the Electricians punish members for incompetent work; the Plasterers prohibit the use of machine-mixed material; and the Stonecutters expel members for work in excess of 40 hours a week without charging overtime. A number of unions, such as the Typographical Union, have rules governing many aspects of their work, and the Musicians Union has extremely detailed provisions which strictly regulate the member's conduct in almost every conceivable job situation.

Strikebreaking is uniformly considered sufficient reason for expulsion whether or not there is an express prohibition, for it undercuts the union's principal weapon and defeats the economic objective for which the union exists. Application of this prohibition is usually clear-cut, but it may, in unusual cases, be applied in rather questionable situations. When the officers of Local 749 of the Teamsters called a strike, several members continued to work, justifying their action on the ground that the strike had not been approved by a two-thirds vote of the local as required by the constitution. They were tried and found guilty of strikebreaking.[33] Another local of the Teamsters expelled members who returned to work after the strike had been enjoined by a court order but before it had been officially ended by the union.[34]

Discipline for striking in violation of the contract is likewise essential

[32] DeMille v. American Federation of Radio Artists, 175 P.(2d) 851 (1946) (Calif.). The court upheld the assessment on the grounds that opposing hostile legislation was within the proper purposes of the union, and DeMille was bound by the majority vote to contribute for that purpose.

[33] Loney v. Wilson Storage & Transfer Co., 8 Labor Cases 62,310 (Cir. Ct., Minnehaha Co., 1944). The court held the expulsion was improper because the strike was improperly called.

[34] Nissen v. International Brotherhood of Teamsters, 229 Iowa 1028, 295 N.W. 858 (1941). The court ordered the men reinstated in the union because both the reason for expulsion and the trial procedure were improper.

if unions are to be responsible bargaining agents. Although the threat is frequently used, this provision is seldom actually applied. However, when workers in a Detroit Rubber plant held a wildcat strike, the Rubber Workers Union found 700 of them guilty and fined each $12.50.[35]

The enforcement of many of the other work rules is primarily a form of unilateral bargaining in which the union states certain conditions under which it will work and withholds all labor until those conditions are met. The most noted example is the Typographical Union's recent attempt to use posted work rules as a complete substitute for a collective agreement. Unilateral bargaining on many of the terms and conditions of employment is standard procedure of the Musicians Union, and it has not hesitated to fine or expel members for cutting the union scale or for violating other work rules.[36] The principal criticism of union rules has been centered in instances when the union's disciplinary power has been used to enforce restrictions on production or to prohibit the use of labor-saving devices. During the early days of the war the Army sought to rush the painting of barracks by having the workers use spray guns instead of brushes; however, the Painters Union threatened to expel any of its members using spray guns and effectively compelled the use of brushes.[37]

Extensive job discipline provisions occur almost solely in skilled craft unions which have obtained a relatively high degree of unionization and job control within their respective trades. Industrial unions and unions in the unskilled trades make little or no attempt to enforce job discipline other than prohibiting strikebreaking and wildcat strikes.

UNION LOYALTY

Since one of the necessary qualities of a "good trade unionist" is an undivided loyalty to his union, it is to be expected that specific acts

[35] United States Rubber Co. and United Rubber Workers, 21 War Labor Reports 182 (1945). When 570 of the workers refused to pay the fine the National War Labor Board ordered the fines deducted from their checks.

[36] Schmidt v. Rosenberg, 49 N.Y.S.(2d) 364 (1944) (member expelled for inducing others to work for less than the union scale, but was ordered reinstated because the union failed to comply with the procedure prescribed by the constitution); Gordon v. Tomei, 144 Pa. Super. 449, 19 A.(2d) 588 (1941) (10 members fined $100 each for cutting union scale but were ordered reinstated because of procedural defects); Yankee Network v. Gibbs, 295 Mass. 56, 3 N.E.(2d) 228 (1936) (member fined $500 for working within the jurisdiction of another local without its consent, but fine held to be an unlawful interference with the employer's right to do business).

[37] Harper v. Hoerchel, 14 So.(2d) 179 (1943) (Fla.). The court refused to enjoin the union from enforcing its rule against its members.

of disloyalty would be made punishable offenses.[38] Sixty-nine unions have clauses expressly prohibiting supporting or holding membership in a rival organization, forty punish the disclosure of union secrets, discussion of union business in public, or furnishing of union membership lists;[39] eight require their members to buy union-made goods; and five prohibit betrayal of the members' interests by bribery or racketeering. Numerous other clauses appear which are also directed against particular acts of disloyalty. The Gas, Coke and Chemical Workers list as an offense, "acting collusively with any employer or his agent to the detriment of the International Union or any of its locals"; the Marine Cooks make it an offense to "stool pigeon to captain, chief steward, or any person outside the Union"; and the Blacksmiths may expel "any man who is a member of the I.W.W., state militia, or miners' police."

Joining with the employer to oppose the union, particularly during a strike, is high treason. In 1917, when the railroad unions struck for the eight-hour day, Burke, a member of the Locomotive Engineers, opposed the strike. He sought to enjoin the leaders from enforcing the strike because he believed it to be unauthorized by the members and unpatriotic. When the union found some evidence that he had received financial and legal assistance from the employer in bringing the suit, they expelled him.[40]

When two rival unions are competing for the loyalty of workers, any support of the opposing union is also treason. Thus, when the president of Local 413 of the Pulp Workers was suspected of withholding per capita dues from the International and making application to the Amalgamated Clothing Workers for a charter, he was summarily expelled.[41] Expulsion for dual unionism raises a particularly difficult problem when the punishment is for campaigning on behalf of a rival union in a representation election. During an NLRB election to determine the bargaining representative, a member of the Lumber and Sawmill Workers acted as an observer for the rival Woodworkers. When the Lumber and Saw-

[38] A number of unions have provisions similar to that of the Building Service Employees for punishing "gross disloyalty." Because these clauses are so vague and general, they will be discussed under that heading.

[39] The provision of the Fur and Leather Workers states: "Any member or officer may be penalized for . . . furnishing a complete or partial list of the membership of the International Union or of the Local Union to any person or persons other than those whose position entitles them to have such a list"; Constitution, 1944, art. 14, sec. 1.

[40] Burke v. Monumental Division No. 52, Brotherhood of Locomotive Engineers, 273 F. 707 (D.C. Md., 1919). The expulsion was held improper because of procedural defects.

[41] Margolis v. Burke, 53 N.Y.S. (2d) 157 (1945). (The summary action was upheld by the court.)

mill Workers won, they expelled him for giving aid and support to a dual union and obtained his discharge under a closed shop provision.[42]

Keeping union business secrets is often essential to effective action against the employer, but provisions relating to this offense are susceptible to application in other situations. The potential coverage of these provisions is illustrated by two extreme cases. During a campaign for the office of secretary-treasurer in a local of the Marine Engineers, one of the candidates published a pamphlet accusing the officers of misfeasance and referred to a number of letters and motions presented in meetings to support his charge. He was expelled for disclosing union business.[43] When a member of the Bill Posters gave financial assistance to an expelled member who was bringing suit against the union, he was charged with doing union business outside meeting, fined $50, and suspended for six months.[44]

POLITICAL ACTION WITHIN THE UNION

A study of union constitutions makes clear that in most unions the structure is essentially democratic. Officers are elected, policies are determined by vote in local meeting or convention, and contracts are approved by referendum. At the same time unions attempt to prevent the disintegrating effects of excessive or abusive use of the democratic process by placing limits on political action by members within the union.

Seventy-four unions, or almost half of those surveyed, have clauses which limit the criticism of officers or fellow members. The Carpenters expel members who "send out any letter or circular of a scurrilous or defamatory nature against any candidate for office." The Plate Printers make it an offense "to impugn the motive of officers or members of committees, or to use reviling or degrading language toward them." The Hodcarriers punish members for "willfully slandering any officer or member," and the Steelworkers punish for "publishing or circulating

[42] Local No. 2880, Lumber & Sawmill Workers, v. N.L.R.B., 158 F.(2d) 365 (C.C.A. 9th, 1946). It should be noted that the issue before the court in this type of case is not the legality of the expulsion but the legality of the discharge by the employer under a union security provision.

[43] Elfers v. Marine Engineers Beneficial Ass'n., 179 La. 383, 154 So. 32 (1934). The expulsion was upheld by the court as within the constitutional provision.

[44] Stroebel v. Irving, 171 Misc. 965, 14 N.Y.S. (2d) 864 (1939) (reinstatement denied for failure to exhaust internal remedies). When a member of a union brought suit to enjoin collection of an alleged illegal assessment and his brother agreed to testify in his behalf if subpoenaed, both were charged with carrying on union business outside of union meetings and were expelled. Both expulsions were held improper; Thomas Angrisani v. Stearn, 167 Misc. 728, 3 N.Y.S. (2d) 698 (1938); Arthur Angrisani v. Stearn, 167 Misc. 731, 3 N.Y.S. (2d) 701 (1938).

among the membership false reports or misrepresentations." Similarly, 35 unions punish the filing of "unfounded or malicious charges against a fellow member." [45]

These clauses may be applied to protect the democratic process from clear abuse. Thus, when a union member attempted to discredit the local president by accusing him of illegal conduct of the union's affairs, he was charged with slander. Upon trial he admitted that his accusations were false and was expelled.[46] However, these provisions may be abused.[47] Eschman was a delegate to the Brewery Workers' National convention, where he led the opposition against Huebner and other officers who sought re-election. After Huebner was re-elected he charged Eschman with publishing a circular slandering the officers. When Eschman's local found him not guilty, Huebner expelled the local and refused to readmit those who had opposed him.[48]

[45] The Sheet Metal Workers have a broad provision: "Any officer or member who wilfully and maliciously files charges against any other officer or member, or who after filing charges wilfully refuses to appear as prosecuting witness and present all facts, information and evidence in his possession to sustain and prosecute such charges shall be reprimanded, fined, suspended or expelled as evidence may warrant"; Constitution, 1946, Art. 21, sec. 4.

[46] Schultze v. Love, 199 App. Div. 815, 192 N.Y.S. 354 (1922) (expulsion upheld). In Walsh v. Reardon, 274 Mass. 530, 174 N.E. 912 (1931) a member who had been defeated in an election for business agent repeatedly came to meetings with a belligerent attitude, continually criticized the officers, and attempted to disrupt the meetings. When international officers visited the local, he vented his spleen on them and seriously embarrassed the local. When warnings failed to restrain him, he was expelled. The court ordered him reinstated because the trial board was not properly constituted. In Smith v. International Printing Pressmen, 198 S.W. (2d) 729 (Tex. Civ. App., 1947) a member was charged with making slanderous remarks about the union to the employer and was fined $25. When he refused to pay the fine, he was expelled. The court held the fine was improper because the constitutional procedure was not followed.

[47] In the 1941 convention of the International Longshoremen's and Warehousemen's Union, President Harry Bridges sponsored an amendment to the constitution to make it an offense for any member to make "false charges, unfounded accusations, or malicious attacks upon any International official . . . or [to commit] any other act calculated to impair the dignity of the International organization." Bridges said that he intended to use it against those who accused him of having scabbed in a strike. "Let's not do any kidding about what this provision is supposed to do. I want to shake a bozo like that right out of the Union." See Seidman, *Union Rights and Union Duties* (1943), p. 27.

[48] Eschman v. Huebner, 226 Ill. App. 537 (1922) (reinstatement of expelled members ordered). Cohen v. Rosenberg, 262 App. Div. 274, 27 N.Y.S. (2d) 834 (1941) is another clear-cut example of abuse. Cohen submitted a proposed amendment to the bylaws of Musicians Local 802 for the purpose of changing the method of electing officers. He recited as his reason for making the proposal that it had been "publicly stated" that the 1936 election was fraudulent. He was charged with "unfair dealing with elected officers" and was expelled. The court ordered that he be reinstated.

Ames v. Dubinsky, 70 N.Y.S. (2d) 706 (1947) involves a borderline case. In the 1944 election of the International Ladies' Garment Workers, Ames was the left-wing candidate opposing Dubinsky. He and some of his followers passed out leaflets claiming that Dubinsky and the other officers were guilty of red-baiting, undemocratic practices, misuse of funds, and collaboration with the employers. They were charged with circulating "defamatory, derogatory, and

The prohibition against filing malicious charges has its proper function, but it also may be abused. Holmes, a member of Bricklayers Local No. 6, brought charges against a member who belonged to the ruling clique. At the hearing witnesses were intimidated, and they refused to testify. Holmes was then tried and found guilty of presenting malicious charges.[49]

A number of unions attempt to control political action within the union by restricting the issuance of circulars or petitions. Fifteen have provisions prohibiting the issuance of any circular for general distribution among the membership without the consent of the international officers.[50] The Granite Cutters prohibit the issuance of any circulars or petitions whatsoever, and the Electricians (AFL) prohibit any political campaigning within the union.[51] The enforcement of these sections may involve a serious restriction on political activity within the union. For example, a member of the Locomotive Engineers claimed that the international officers had refused to prosecute a grievance. When he appealed to the convention, he circulated a pamphlet stating his case and accusing the officers of deceit and tyrannical influence. He was expelled for issuing a circular without the consent of the officers.[52]

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scurrilous statements concerning the officers in their official capacity." The trial board found them guilty and suspended them for three years but permitted them to continue working in union shops. On appeal to the courts, the expulsion was upheld.

[49] Holmes v. Brown, 146 Ga. 402, 91 S.E. 408 (1917) (reinstatement ordered). In Jose v. Savage, 123 Misc. 283, 205 N.Y.S. 6 (1924), a member charged the local president with misconduct. The president forbade him to read the charges or present any evidence but immediately accused him of making malicious charges and had him suspended for one year. The court held this suspension was improper. Similarly, in Shapiro v. Gehlman, 152 Misc. 13, 272 N.Y.S. 624 (1934), Shapiro filed charges against the business agent of Stagehands Local No. 1. When the business agent was acquitted, he immediately charged Shapiro with slandering an officer and obtained his expulsion. The court held that the slander was proved and the expulsion was proper.

[50] The provision of the Brotherhood of Railroad Trainmen is typical: "Any circular emanating from a subordinate lodge, or any member of the brotherhood, shall require the approval of the President of the Brotherhood before being put into circulation. . . . Any member violating this section, shall, upon conviction, be expelled"; Constitution, 1939, sec. 154.

[51] A directly contrary attitude is expressed by the Molders and Foundry Workers: "Whereas, circular letters are the only means of speedily exchanging thoughts with other local unions, and Whereas, under the use of circular letter a free and democratic expression of thought is possible, and Whereas, as long as a circular letter does not advocate violation of the Constitution, nor conflict with any of its provisions, it will in no way prove detrimental; therefore be it Resolved, that any local union may have the right to issue circular letters to other local unions without permission of the President. . . ." Standing Resolution No. 59 (Constitution, 1946).

[52] Love v. Brotherhood of Locomotive Engineers, 139 Ark. 375, 215 S.W. 602 (1919) (expulsion upheld as conduct was clearly prohibited by the constitution). Local No. 7 of the

A more limited form of restriction, aimed at preventing the disruptive effects of factionalism within the union, is the prohibition found in nine union constitutions against organizing groups within the union. A typical clause is that of the Hatters: "No member . . . shall hold membership in any group, club or any other such combination . . . whose purpose is to attempt in any manner to shape the policies or influence or determine the choice of officers." The International Ladies Garment Workers have a similar prohibition but permit such clubs during the three months preceding an election.

Five railroad brotherhoods have provisions prohibiting members from interfering in any way with a grievance in the hands of the adjustment committee.[53] This provision is primarily aimed at preventing individuals from disrupting the orderly processes of contract administration. However, it may be applied to restrict a member from criticizing his officers for arbitrary or collusive settlement of grievances.

POLITICAL ACTION OUTSIDE THE UNION

Forty-four unions have provisions aimed at excluding or eliminating so-called "subversive elements" from the union. The United Mine Workers provide that "any member accepting membership in the Communist Party, or Fascist, Nazi, or Bund organizations shall be expelled . . . "[54] The Asbestos Workers are less specific in expelling any member who affiliates with "any agency or organization advocating the overthrow of the Government by force,"[55] while the Glass Bottle Blowers vaguely

Bricklayers distributed a circular objecting to the pay of the international officers. Because it had not been approved for distribution, the local was suspended, and a new local was created. The court enjoined the suspension. Local No. 7, Bricklayers, Masons, and Plasterers' International Union v. Bowen, 278 F. 271 (S.D. Texas, 1922).

[53] "Any member, including the complainant, who verbally, by writing, or otherwise communicates with an official or officials of the company, or others, interfering with a grievance or any other matter being handled by or through the Joint Protective Board, will be liable to revocation of membership"; Constitution of Brotherhood Railway Carmen, 1946, sec. 86.

[54] The International Chemical Workers expel members of these organizations and also provide: "It shall not be necessary that an individual so charged, admit connection with these organizations, provided that the Local Union is convinced by the evidence and so declare by majority vote, after trial of the accused according to our laws"; Constitution, 1944, art. IV, sec. 2.

[55] The Hotel and Restaurant Employees have a somewhat broader provision: "Any member who associates himself with any organization or any group that expounds or promotes any doctrine or philosophy inimical and subversive to the fundamental principles and institutions of the Government of the United States, the American Federation, and this International Union" shall be punished; Constitution, 1943, sec. 20(b).

provide expulsion for anyone "found to have leanings toward dictatorial principles." [56]

These clauses, insofar as they are applied, are used primarily to purge the union of left-wing elements. The right-wing faction of the Woodworkers succeeded in getting an anti-Communist clause written into the constitution and expelled a number of left-wing leaders on the charge of Communism.[57] Both the Amalgamated Clothing Workers [58] and the ILGWU have also used such clauses to expel large numbers of Communists.[59] In some cases leaders in control have leveled the charge of Communism at any who dared to oppose them. Thus, John L. Lewis used the charge of Communism against both John Brophy and Alexander Howatt when they dared run against him for presidency of the UMW and drove them from the union.[60]

Some unions which have relied heavily on legislation to achieve their objectives prohibit their members from interfering in any way with the legislative program of the union. Six railroad brotherhoods,[61] the Journeymen Barbers, and the National Association of Letter Carriers [62]

[56] The Printing Pressmen are equally vague in providing expulsion for any person "who is imbued with or is an exponent of the false doctrines of sovietism and communism"; Constitution, 1940, art. 22, sec. 10.

[57] See Jensen, *Lumber and Labor* (1945), pp. 228–245. The present constitution of the Woodworkers provides: "Any member accepting membership in the Communist party shall be expelled . . . and is permanently debarred from holding office."

[58] Seidman, *The Needle Trades* (1941), p. 176. Similar action was taken by the Hatters to oust Communists (Green, *The Headwear Workers* [1944], pp. 170, 180).

[59] Seidman, p. 158; Foster, *Misleaders of Labor* (1927), p. 297. These clauses were also used by the Carpenters, United Mine Workers, Painters, and others to eliminate left-wing elements; *ibid.;* Perlman and Taft, *History of Labor in the United States* (1937), pp. 538–562; Millis and Montgomery, *Organized Labor* (1945), pp. 178–181; Daugherty, *Labor Problems in American Industry* (1941), p. 550.

[60] Coleman, *Men and Coal* (1943), p. 109; American Civil Liberties Union, *Democracy in Trade Unions* (1943), p. 38. Hutcheson allegedly obtained adoption of an anti-Communist clause in the Carpenters' constitution by a fraudulent count of referendum ballots. He then used it to eliminate all criticism; Minton and Stewart, *Men Who Lead Labor* (1937), pp. 50–65. When notorious racketeers dominated the Hotel and Restaurant Employees locals in New York in 1934–1935, they expelled large numbers of opponents on the charge of Communism; *Proceedings, 31st General Convention,* 1947, pp. 190 ff. However, Professor Taft states that out of 12 racketeering unions investigated by Dewey in New York City, 10 were seized by Communists; Taft, "Democracy in Trade Unions," 36 *Amer. Econ. Rev.* (1946), 359.

[61] The Constitution of the Brotherhood of Locomotive Firemen and Enginemen is fairly typical: "Any member interfering with legislative matters affecting national, state, territorial, dominion, or provincial legislation, thereby adversely affecting the interests of our members or organized labor, or who engages in any political campaign against any candidate for public office who has received the endorsement of the organization, shall, upon conviction be penalized . . ." art. 17, sec. 8(a).

[62] ". . . any member who shall cause to have introduced or endeavor to have passed in Congress any measures relating to legislation for letter carriers which has not been approved by this Association shall . . . be expelled"; Constitution, 1943, art. 15, sec. 1.

have such clauses.[63] Although keeping a united front in lobbying for legislation is extremely valuable, the matter can be overdone. The Brotherhood of Locomotive Engineers advocated that carbon-arc headlights be legally required on all locomotives. When a member testified under subpoena before the Interstate Commerce Commission against such headlights, he was expelled.[64] The Railroad Trainmen expelled a member who signed a petition asking for repeal of a "Full Crew Law" which the Brotherhood had advocated.[65]

Labor's long-standing distrust of the courts is reflected in the provisions in sixty-six constitutions which prohibit members from resorting to the courts until all appeals within the union have been exhausted.[66] The Switchmen's Union, however, treats resort to the courts as an act of disloyalty and expels any member who brings any legal action whatsoever against the union. In application, the milder clauses may extend far beyond their original purpose and be used as instruments of oppression. For example, when Polin accused the officers of Local 306 of the Stagehands with embezzling union funds and brought suit for an accounting, business agent Kaplan charged him with not exhausting the internal appeals and had him expelled.[67] When Local 259 of the Teamsters was taken over by the international officers and a supervisor appointed to manage its affairs, Leventhal, president of the local, sought an injunction to prevent this destruction of local self-government. Because he had not first appealed to the international executive board

[63] An unusual and perhaps seldom-enforced provision is found in the United Auto Workers-C.I.O. constitution: "It shall be the duty of each member to participate in all Local, State, and Federal elections through registration and balloting"; Constitution, 1944, art. 39, sec. 3.

[64] Abdon v. Wallace, 95 Ind. App. 604, 165 N.E. 68 (1929) (expulsion held improper).

[65] Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 A. 70 (1920) (expulsion held improper). A different variation occurred in Morgan v. United Electrical Radio and Machine Workers, 331 Ill. App. 21, 72 N.E. (2d) 59 (1946). Morgan, a leader in the local, opposed the policy of engaging in partisan political activity. When the local voted to campaign for the Democrats, he campaigned for the Republicans. He was expelled, and the expulsion was upheld by the court because he had not exhausted his internal remedies.

[66] A typical provision is that of the Gas, Coke, and Chemical Workers: "Members may be fined or expelled for . . . taking court action against the Union before exhausting all remedies provided in the Constitution"; Constitution, 1944, art. 8, sec. 1(f).

[67] Reinstatement was ordered because expulsion was based also on another offense which was not stated in the constitution — Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931). A somewhat similar case where the officers of another local of the Stagehands Union used this clause in an attempt to retaliate against those who sought court relief against racketeering is Collins v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, 119 N.J. 230, 182 A. 37 (1935).

and the convention, he was expelled for bringing suit in the courts without exhausting his internal appeals.[68]

PERSONAL MORALS

Most unions make no attempt to regulate the personal conduct or morals of their members except when the conduct or morals have a direct relationship to union membership or to work. However, a few unions, such as the railroad brotherhoods, which have emphasized the fraternal aspects of a union, treat membership as a personal relationship and punish various immoral acts.

Twenty-two unions restrict members in their use of intoxicating liquors. Among these are the Railroad Trainmen, who punish for "drunkenness," the Carpenters who may expel "habitual drunkards," and the Maritime Union which may fine for drunkenness on the job, in the union hall, or in union meeting. The Street and Electric Railway Employees and the Switchmen may expel any person who engages in the sale of intoxicating liquor.

Eight unions expel members for theft, or for being convicted of a felony or "serious wrongdoing," and four punish "immoral practices." Among the many miscellaneous offenses for which various unions discipline are desertion of family, keeping a gambling house, unfair gambling, fighting, or using abusive language. At least forty-two unions have clauses providing expulsion for any who obtain admission by fraud or misrepresentation. However, this is really voiding the admission rather than punishing for an offense.[69]

The application of these clauses has appeared only in a few cases[70] and has apparently created no serious problem. The Carpenters have expelled for the sale of intoxicating liquor[71] and for the use of profane

[68] *Proceedings, 15th Convention of International Brotherhood of Teamsters,* etc., 1947, p. 383.

[69] It has been held that, although there is no provision for expulsion in the constitution, a union may expel a man who obtains admission by misrepresenting that he has the proper skill; Beesley v. Chicago Journeymen Plumbers Ass'n. 44 Ill. App. 278 (1891). In International Brotherhood of Boilermakers v. Wood, 162 Va. 517, 175 S.E. 45 (1945) the court held that when one wrongfully obtained admission to a union, the admission was void from the beginning.

[70] Sullivan, president of Local 32B of the Building Service Employees in New York had been publicly accused in the press of racketeering. The International Executive Board charged him with "acts of serious moral turpitude." In Sullivan v. McFetridge, 183 Misc. 106, 50 N.Y.S. (2d) 385 (1944) the court enjoined the hearing because of the vagueness of the charges.

[71] Steinert v. United Brotherhood of Carpenters and Joiners, 91 Minn. 189, 97 N.W. 668 (1903) (expulsion held ineffective for lack of a trial).

language at meetings,[72] the Trainmen for adultery,[73] the Stagehands for withholding death benefits from a widow,[74] and the Maritime Union for carrying a knife on shipboard.[75]

VAGUE OR GENERAL CLAUSES

It is impossible for a union which is engaging in a wide variety of activities within an extremely complex society, and whose members are working within intricate industrial organizations, to list all the types of conduct which it may have cause to discipline. Because of the impracticability of listing all offenses, unions resort to catchall clauses which can be used as the need arises.

These vague clauses take many forms. They may prohibit conduct which is "disloyal," "dishonorable," "unbecoming a union member," or "detrimental to the best interests of the union"; "which destroys harmony," "causes dissension" or "disruption," or which "undermines the union or its members," or "brings the union into discredit or disrepute." [76] Regardless of the particular wording, it is apparent that any one of these clauses is capable of being applied to any act which those enforcing discipline feel the union has a legitimate interest in punishing. Ninety-six unions, or nearly two-thirds of those surveyed, list one or more of these vague offenses as ground for discipline.

These clauses are frequently applied in punishing conduct which the union is concededly justified in prohibiting. The Teamsters expelled a member on a charge of "gross disloyalty" for aiding an employer in a strike; [77] the Carpenters expelled a foreman for "creating dissension" by refusing to let members work unless they would accept less than the union scale; [78] and the Locomotive Engineers found stealing company property to be "unbecoming conduct." [79] Other catchall provisions were

[72] Walsh v. Judge, 263 N.Y. 136, 188 N.E. 280 (1933) (expulsion held to be for a proper cause).

[73] Bonham v. Brotherhood of Railroad Trainmen, 146 Ark. 117, 225 S.W. 335 (1921) (reinstatement denied for failure to exhaust internal appeals).

[74] Bush v. International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators, 55 Cal. (2d) 357, 130 P. (2d) 788 (1942) (expulsion upheld).

[75] *Proceedings, International Convention, National Maritime Union,* 1945, pp. 194, 238, 368.

[76] Among the clauses which are even more vague are the following: "betrays an association member or members, or the Association, . . . or give aid and comfort to any opponent of the best interests of the airline piloting profession" [Airline Pilots]; "all other causes which generally violate sound trade union principles" [Plasterers]; "treason to the Brotherhood or to the cause of labor" [Shoe Allied Craftsmen]; "any other cause which would cast reflection or strain upon the Union" [Switchmen].

[77] Becker v. Calnan, 313 Mass. 625, 48 N.E. (2d) 668 (1943) (expulsion upheld).

[78] Drazen v. Curby, 172 App. Div. 417, 158 N.Y.S. 507 (1916) (expulsion upheld).

[79] Austin v. Dutcher, 56 App. Div. 393, 67 N.Y.S. 819 (1900) (expulsion upheld).

used by the Brewers to rid themselves of a man who had obtained admission by fraud; [80] by the Laundry Workers to expel one who had viciously assaulted a fellow member; [81] and by the Teamsters to fine officers who had stuffed the ballot box.[82]

These general clauses have been used frequently to expel members for various acts supporting rival unions. The Operating Engineers expelled three men for "creating disharmony" by soliciting membership in the Railroad Trainmen; [83] the Mechanic Educational Society found six members guilty of "conduct detrimental to the best interests of the union" for supporting the Electrical Workers in a campaign preceding an NLRB election; [84] and the Railroad Trainmen charged a member with "violating the duties of membership" for voting for the Switchmen in a similar bargaining election.[85]

The vagueness of these clauses makes them particularly susceptible to abuse, and they have occasionally been used to suppress individual rights within the union.[86] A member of the Painters wrote a letter for publication in the Newark newspapers urging unions to clean their own house and remove racketeering leaders. The officers of District 10 of the Painters charged him with "creating dissension and working against the interests and harmony of the Brotherhood" and had him expelled.[87] Similarly, when members of a faction within the Marine and Shipbuilding Workers distributed a handbill accusing their officers of being Communists, they were expelled for "conduct contrary to the best interests of the union." [88]

[80] Krause v. Sanders, 66 Misc. 601, 122 N.Y.S. 54 (1910) (expulsion upheld).

[81] Smetherian v. Laundry Workers Union, Local No. 75, 44 Cal. App. (2d) 131, 111 P. (2d) 948 (1941) (expulsion held improper as conduct was not within the meaning of the clause).

[82] McGinley v. Milk & Ice Cream Salesmen, Drivers & Dairy Employees Local Union No. 205, 351 Pa. 47, 40 A. (2d) 16 (1945) (expulsion held improper because of unfair trial).

[83] Leo v. Local Union No. 12 of International Union of Operating Engineers, 26 Wash. (2d) 498, 174 P. (2d) 523 (1946) (expulsion held improper as conduct was not a violation of the constitution).

[84] Eureka Vacuum Cleaner Co., 69 N.L.R.B. 878 (1946) (discharge by employer under maintenance of membership clause held to be a discriminatory discharge).

[85] Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P. (2d) 787 (1935) (expulsion held improper as denial of fundamental rights).

[86] For a glaring case of abuse of such clauses by the officers of the Hodcarriers as one instrument in a whole scheme of domination, oppression, and racketeering, see Duzing v. Nuzzo, 26 N.Y.S. (2d) 345 (1941).

[87] Gaestel v. Brotherhood of Painters, 120 N.J. Eq. 358, 185 A. 36 (1936) (expulsion held improper because of unfair trial).

[88] Bethlehem Fairfield Shipyard & Industrial Union of Marine and Shipbuilding Workers, 20 W.L.R. 263 (Shipbuilding Commission, N.W.L.B., 1944) (employer ordered to discharge under maintenance of membership clause). In Alexion v. Hollingsworth, 289 N.Y.

A catchall clause may also be used to restrict a member's rights outside the union. Thus when the widow of an engineer who had been killed in a railroad accident was unable to make a satisfactory settlement with the company, a member of the Locomotive Engineers urged her to sue and at the trial testified in her behalf. Union officers who were apparently in collusion with the railroad charged him with "conduct unbecoming a member and violating his obligation" and had him expelled.[89]

A widely publicized case arose in the Edgewater plant of the Ford Motor Company. Two of the test drivers were testing trucks in half the time that other drivers were taking. Mutual recriminations of "soldiering" and "sloppy work" created considerable hard feeling and threats of violence. The two "speeders" were finally charged with "conduct unbecoming a union member" and expelled from the union. Because of a union shop agreement they were then discharged.[90]

There are 106 unions that have clauses providing that "any violation of the constitution" shall be the basis for charges.[91] Under such a clause

91, 43 N.E. (2d) 825 (1942) the situation was reversed. When many of the members of Local 1415 of the Retail Clerks (AFL) became dissatisfied with some of their leaders, they called a special meeting. At the meeting they expelled twenty-three officers and members charged with conduct "inimical to the best interests of the union" and then, having eliminated the opposition, they voted to withdraw from the International and become independent. The court nullified this action as unconstitutional.

[89] Thompson v. Grand International Brotherhood of Locomotive Engineers, 41 Tex. Civ. App. 176, 91 S.W. 834 (1905) (the court held that writing the letter could be grounds for expulsion but testifying under subpoena could not). An AFL Federal Labor Union expelled a member for "making statements contrary to the best interests of the union" when she gave testimony at a National Labor Relations Board hearing favoring a rival union; N.L.R.B. v. American White Cross, 160 F.(2d) 75 (C.C.A. 2d, 1947) (discharge by employer held discriminatory). Similarly, the Farm Equipment Workers expelled a member for "conduct detrimental to the union," because he testified in favor of an employer at an arbitration hearing. Link Belt Speeder Corp. and United Farm Equipment Workers, 17 L.R.R.M. 2749 (1945) (expulsion held improper).

[90] Ford Motor Co. and United Auto Workers (CIO), 14 L.R.R.M. 2625 (1944) (employer not required to discharge under union shop agreement). In a somewhat similar case a member was expelled on the charge of "conduct unbecoming a union member" because she had told her forelady that the union was putting the pressure on her to hold down her production on piecework; Dragwa v. Federal Labor Union No. 23070, 136 N.J. Eq. 172, 41 A. (2d) 32 (1945). The court refused to order reinstatement because she had not exhausted her internal appeals.

[91] Many unions also provide that any violation of the oath of membership may be punished. The breadth of this provision becomes apparent upon an inspection of the oath. A typical oath is that of the Photo-Engravers: "I do hereby pledge myself upon my honor as a man that I will not reveal any business or proceedings of this union except to those whom I know to be members in good standing thereof; that I will not wrong a fellow-member or see him wronged, if in my power to prevent; and that I will uphold and defend the Constitution of the International Photo-Engravers and the Constitution and adopted wage scale of the local union with which I am affiliated, and promise to do all in my power to further the interests of the International Photo-Engravers Union."

any deviation from prescribed conduct, procedure, or policy becomes a punishable offense. The scope of this general prohibition might not be so difficult to determine in the case of the Amalgamated Clothing Workers, whose constitution contains only 31 pages, but the number of possible offenses becomes almost unlimited in the case of the Musicians, whose constitution contains nearly 200 pages of fine print. Since the average union constitution contains from 60 to 90 pages, the large number of offenses which may be implied from the various sections creates a high degree of uncertainty.

Nearly half of the unions make punishable not only violation of the constitution but also "disobedience to the regulations, rules, mandates, and decrees of the Local or International." This makes the member subject to a mass of shifting rules. During the bitter jurisdictional dispute in the Hollywood studios, Walsh, international president of the Stagehands, ordered the members of that union to cross the Carpenters' picket lines and do the carpenter work. When some of the members refused to do the work, they were charged with insubordination.[92] In another case the Plumbers local in New Orleans voted that two of its members who were on the city Board of Plumbing Examiners should appoint Brother McGilravy as a plumbing inspector. When they refused they were fined and blacklisted by the union.[93]

A total of 130 unions have either a vague clause such as "conduct unbecoming a union member" or a general clause such as "violation of the constitution." The high frequency of these clauses is emphasized by the fact that only twelve unions which list any offense whatsoever do not list one or more of these vague offenses.

FREQUENCY OF APPLICATION

The foregoing discussion has been directed toward describing the particular offenses for which union members may be punished and indi-

[92] Stoica v. International Alliance of Theatrical and Stage Employees, 178 P. (2d) 21 (1947) (Calif. App.). Legal relief was denied because they had not exhausted their internal appeals.

[93] Schneider v. Local Union No. 60, 116 La. 270, 40 So. 700 (1905) (expulsion held improper as against public policy). Two members of Teamsters Local 25 were fined and suspended. When they appeared before a Massachusetts legislative committee and told why they had been punished, they were expelled. They appealed within the union, but their appeal was denied with this explanation: "It is one thing to talk for or against the merits of proposed legislation. It is an entirely different matter to take advantage of the publicity given to a legislative hearing for the express purpose of making false statements for the purpose of bringing the International and the local into disrepute" *(Proceedings, 15th Convention of International Brotherhood of Teamsters,* etc., [1947], p. 399).

cating the broad reach of the various constitutional provisions. It is important to determine also the frequency with which the various provisions are applied and the frequency with which various types of conduct are punished.

In an attempt to obtain a more complete view of the frequency of offenses, an analysis has been made of the 218 reported cases in which discipline was directly or indirectly involved. Each case was analyzed to determine two facts: (1) the constitutional clause on which the charge was based, and (2) the conduct which was punished (see Table I,

Table I. Offenses Punished by Unions.

Offense	Number of constitutions *	Cases invoking clause †	Cases punishing conduct ‡	Correspondence of clause to conduct §
I. Financial				
Failure to pay dues		4	2	2
Failure to pay assessments		5	6	5
Misappropriation of funds	64		2	
II. Job Discipline				
Refusing to strike or strikebreaking	59	8	12	6
Unauthorized striking or violation of contract	31	6	8	4
Working with nonmembers	11	2	2	2
Violating union work rules	53	14	19	14
Other offenses on the job			4	
III. Union Loyalty				
Aiding rival union or dual unionism	69	13	23	10
Revealing union secrets or union business	40	5		
Buying nonunion goods	8			
Bribery and racketeering	5	1	2	1
Aiding employer against union		1	7	1
IV. Political Activity within the Union				
Criticizing officers or union policies	74	11	43	5
Filing charges against a member	35	2	4	1
Issuing unapproved circulars	16	3		
Forming groups within the union	9	2		
Interfering with grievance	5	3	3	2
Other internal political action			3	
V. Political Activity outside the Union				
Supporting or joining subversive groups	44			
Interfering with legislative program of union	6	2	4	1
Bringing suit or testifying	66	1	14	1
Other political action			4	

Table I. Offenses Punished by Unions. *Continued*

Offense	Number of constitutions *	Cases invoking clause †	Cases punishing conduct ‡	Correspondence of clause to conduct §
VI. Personal Morals				
Use or sale of liquor	22	1	2	1
Committing a serious crime or immoral act	8		2	
Obtaining admission falsely	42	1	2	1
Miscellaneous		1	3	1
VII. Vague or General Clauses				
"Unbecoming conduct," "detrimental to the best interests of the union," etc.	96	47		
"Violation of constitution or oath," etc.	105	13		
Violation of union rules or resolutions	68	7		
Cases not indicating clause invoked		6		
Cases not indicating conduct punished			24	

* Constitutions of 154 international unions were analyzed to determine the offenses listed as punishable. This column indicates the number of constitutions which listed the particular offense as punishable.

† A total of 177 cases decided by courts, administrative boards, and arbitrators are classified. In 41 other cases, neither the clause invoked nor the conduct punished was indicated. These have been omitted from the tabulation. This column indicates the number of cases in which the particular constitutional clause was used as the basis of disciplinary action.

‡ This column indicates the number of cases in which the particular types of conduct were punished irrespective of the constitutional clause which was applied by the union.

§ This column indicates the number of cases in which the clause invoked by the union corresponded to the conduct punished. Such coincidence occurred in 57 of the 177 cases.

columns 2 and 3). Many of the reports are so indefinite or incomplete that accurate classification is impossible; forty-one cases had to be eliminated because neither the clause invoked nor the conduct punished was adequately stated. It must be recognized that these cases do not represent typical discipline actions of unions but consist largely of those instances where serious penalties were inflicted by questionable action. (See Table II.) Thus the number of cases appearing under financial discipline includes only those rare instances where legality of particular dues or assessments is involved. Similarly, embezzlers of union funds are not likely to appeal to the courts. However, the fact that these are cases of questionable application of union discipline may make them even more indicative of the problem to be solved.

An examination of the frequency with which the various constitutional provisions were invoked (column 2) reveals that in over one-third of

Table II. Percentage of Expulsions for Various Offenses in Six Unions.*

Offenses	Unions					
	A	B	C	D	E	F
Scabbing	29	74	..	..	60	100
Wildcat strike	..	..	..	90	..	..
Work rule violation	..	..	..	..	10	..
Dual unionism	32	..	70	..	30	..
Misappropriation	3	11	..	..	..	..
Theft	..	..	10	..	..	..
Spying	1	..	..	..	..	..
Communist activities	3	..	..	..	..	..
Unbecoming conduct	32	..	..	10	..	..
Miscellaneous	..	15	20	..	..	..

* Inquiries were sent to the officers of all international unions with a membership of more than 50,000 asking for statistics on the number expelled for each of the various offenses. Six unions gave answers specific enough for tabulation. (The names of the unions were given in confidence.)

the cases (sixty-seven) the charge was based on one of the vague or general clauses, such as "conduct unbecoming a union member." Specific work rule provisions were invoked in fourteen cases, prohibitions against dual unionism were invoked in thirteen cases, and restrictions on criticism of union officers or union policies were applied in eleven cases. Other constitutional provisions were applied with relatively little frequency.

There is often a divergence, however, between the particular clause which is invoked and the conduct for which the member is punished. For example, members of the Stagehands who opposed racketeering leaders were expelled for failure to meet their financial obligations to the union precisely on time.[94] Members of the Marine Engineers who issued a pamphlet in an election campaign were charged with disclosing union business in public,[95] and members of another union who refused to join a certain political party were charged with dual unionism.[96] As shown in column 4 of Table I, in less than sixty cases did the union correctly name the specific offense which was to be punished. A large

[94] Fleming v. Moving Picture Machine Operators, 16 N.J. Eq. Misc. 502, 1 A. (2d) 850 (1938) (expulsion held improper as union was usually not so strict in demanding prompt payment).

[95] Elfers v. Marine Engineers Beneficial Ass'n. 179 La. 383, 154 So. 32 (1934) (expulsion upheld).

[96] Zalnerovich v. Van Ansdal, 65 N.Y.S.(2d) 650 (1946) (injunction of discipline proceedings denied).

part of this is accounted for by the use of vague or general clauses, but in approximately one-fourth of the cases the member was charged with one specific offense when the conduct involved was really a different specific offense.

Because of the divergence between the particular clause invoked and the conduct punished, it is important to determine the relative frequency with which each type of conduct is punished (column 3). In almost one-third of the cases (fifty-three) members were disciplined for political activity within their union. Forty-three of the cases involved criticism of officers or opposition to the policies of the union, and in eight of these the activity was directly related to campaigning in a union election. Conduct relating to job discipline was punished in forty-five cases, or about one-fourth of those surveyed. Violation of various work rules was punished nineteen times; refusing to obey strike orders or strikebreaking, twelve times; and engaging in a wildcat strike or other violations of the contract, eight times. Disloyalty was punished in thirty-two cases, but three fourths of these involved various offenses which can be grouped under the heading of dual unionism. The only other offense for which there was any substantial number of prosecutions was for bringing an action in court against the union or offering testimony in a court action. It is interesting to note that in only nine cases were members punished for any of the immoral acts which various unions prohibit.

GENERAL CHARACTERISTICS OF PUNISHABLE OFFENSES

From the details of the preceding sections it is possible to discern certain general characteristics of the constitutional provisions defining punishable offenses and the union practices in applying those provisions:

(1) It is clear that nearly all of the constitutional clauses listing offenses have a proper place in enforcing union discipline. They are all products of deeply felt needs, and they all contribute toward maintaining the union as an effective organization. Each can be applied to particular conduct with unquestionable propriety.

(2) It is clear that nearly all of the clauses are subject to abuse. The cases in which the various clauses have been applied reveal that practically every clause is capable of being diverted from its rightful use and becoming an instrument of oppression. Although the number of abusive applications is unquestionably small, the potential danger is substantial.

(3) There is a large element of uncertainty as to what conduct constitutes a punishable offense. This is principally a product of describing almost all of the offenses in broad language and loose wording. Such clauses as "conduct detrimental to the best interests of the union" are merely an extreme example of the uniform quality of vagueness. In a sizable proportion of the cases the charge is based on one of the general clauses prohibiting "unbecoming conduct." Even in those cases where the charge states a specific offense, the conduct which is punished may be within the reach of the elastic words of the clause but beyond its intended meaning or proper purposes. The danger of uncertainty is that the constitutional provisions fail to inform a member what is required of him and to guide his conduct. This becomes of crucial importance when he desires to challenge those who are in power. Uncertainty requires him, for the sake of safety, to proceed slowly and speak gently. Similarly, these provisions fail to furnish an adequate guide to those who are responsible for enforcing union discipline. An accused member is apt to be convicted by the trial body for conduct which it believes undesirable rather than for conduct which the constitution makes punishable.

(4) Perhaps the most important characteristic of punishable offenses is the heavy accentuation on disciplining for political activity within the union. Two-thirds of the unions have clauses which expressly restrict internal political action, and these clauses reach a wide range of activity — from slandering union officers to issuing circulars to the members. The reported cases show that such clauses are frequently invoked, but they are not the only ones that are used actually to restrict political action. Vague and general clauses are readily adaptable, and other specific provisions may be distorted to this end. The reported cases reveal that political action is punished far more frequently than any other type of conduct. It is true that these cases are not a fair sample of typical union discipline, but they do represent the questionable areas of discipline and indicate the most important problems to be solved.